



Financial Crimes Enforcement Network Department of the Treasury

August 17, 2004

FinCEN's 314(a) Fact Sheet

Section 314(a) of the USA PATRIOT Act of 2001 (P.L. 107-56)¹, required the Secretary of the Treasury to adopt regulations to encourage regulatory authorities and law enforcement authorities to share with financial institutions information regarding individuals, entities, and organizations engaged in or reasonably suspected, based on credible evidence, of engaging in terrorist acts or money laundering activities. FinCEN issued a proposed rule on March 5, 2002 and the final rule on September 26, 2002 (67 Fed. Reg. 60,579).

Overview

FinCEN's regulations under Section 314(a) enables federal law enforcement agencies, through FinCEN, to reach out to 34,168 financial institutions to locate accounts and transactions of persons that may be involved in terrorism or money laundering.

FinCEN receives requests from federal law enforcement and upon review, transmits requests to designated contacts within financial institutions across the country. The requests contain subject and business names, addresses, and other identifying data. The financial institutions are required to query their records for data matches, including accounts maintained by the named subject during the preceding 12 months and transactions conducted within the last six months. Financial institutions have two weeks from the transmission date of the request to respond on a 314(a) Subject Information Form. The Form requires a financial institution to place only an "X" next to the particular named subject if a match was found, and to provide point-of-contact information. If the search does not uncover any matching of accounts or transactions, the financial institution is instructed not to reply to the 314(a) request.

FinCEN began processing 314(a) requests in November 2002. This system was temporarily suspended, based on feedback from system users. Following extensive consultations, FinCEN issued FAQs to implement and streamline the process and resumed operation of the system in February 2003. Since that time, as with any new system, the process continues to be fine-tuned.

The Process

Through an expedited communication system, FinCEN's 314(a) process enables an investigator to canvas the nation's financial institutions for potential lead information that might otherwise

¹ Section 314 is reprinted in the Historical and Statutory Notes to 31 U.S.C. § 5311.

never be uncovered. The focus quickly zeros in on relevant locations and activities. This cooperative partnership between the financial community and law enforcement allows disparate bits of information to be identified, centralized and rapidly evaluated.

It is important to note, however, that Section 314(a) provides lead information only and is not a substitute for a subpoena or other legal process. To obtain documents from a financial institution that has reported a match, a law enforcement agency must meet the legal standards that apply to the particular investigative tool that it chooses to use to obtain the documents.

To ensure that Section 314(a) inquiries are being used only for appropriate cases, FinCEN's Section 314(a) process requires federal law enforcement to provide assurances that the request has been subject to appropriate scrutiny at the agency level and that the matter under investigation satisfies FinCEN's standards for processing a formal Section 314(a) inquiry. FinCEN requires all requesters to submit a form certifying that the investigation is based on credible evidence of terrorist financing or money laundering.

Criteria for Money Laundering Requests

Because money laundering encompasses such a wide range of underlying criminal activity, FinCEN recently imposed additional requirements for processing money laundering requests. Agencies must determine that a money laundering case is significant before submitting a 314(a) request to FinCEN. To ensure that this standard is met, FinCEN requires documentation showing the size or impact of the case, the seriousness of the underlying criminal activity, the importance of the case to a major agency program, and any other facts demonstrating its significance.

In addition, FinCEN will no longer process a Section 314(a) money laundering request in cases where available traditional means of investigation have not been exhausted. The support for the assertion that other investigative alternatives have been exhausted or are unavailable must be provided in the form submitted to FinCEN for review prior to the request being submitted to financial institutions by FinCEN.

To date, the 314(a) process already has proved to be successful, as illustrated below. Results have yielded productive leads for both terrorist financing and money laundering investigations. The immediate matches have, for example, led to the identification of new accounts, transactions, indictments, etc. and enabled law enforcement to efficiently direct its use of legal processes to promptly obtain critical evidence in numerous cases. Examples of 314(a) requests, based on money laundering, include:

- Hawala operation involving a blocked country
- Arms trafficking
- Alien smuggling resulting in fatalities
- Cigarette smuggling
- Nationwide investment fraud with many victims
- International criminal network involved in identity theft and wire fraud
- Multi-agency investigation of drug trafficking rings

Results

The 314(a) system has processed 311 requests submitted by ten Federal agencies from February 18, 2003 – August 17, 2004. The federal law enforcement organizations (LE) have submitted cases in the conduct of the following significant criminal investigations:

Terrorism/Terrorist Financing – 115 cases
Money Laundering – 196 cases

(02/01/2003 – 08/17/2004)

There were 2,181 subjects of interest identified in the investigations. Of these, the Financial Institutions (FI) responded with 16,124 total subject matches: 15,272 positive and 852 inconclusive.

Feedback from Law Enforcement

The 314(a) feedback from the LE requesters has been overwhelmingly positive and has resulted in the discovery and/or issuance of the following:

1,236	New Accounts Identified
73	New Transactions
601	Grand Jury Subpoenas
11	Search Warrants
129	Administrative Subpoenas/Summons/Other
9	Arrests
2	Indictments

(02/01/2003 – 08/17/2004)